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U.S. Citizenship
and Immigration
Services

FILE: LIN 03 119 55362 Office: NEBRASKA SERVICE CENTER

Date: JUL 06 2004

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

to Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a restaurant, mini-mart, hotel, and filling station/truck stop. In order to employ the beneficiary as an accountant, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner had failed to establish that the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the director's decision was erroneous, and that the evidence of record at the time of the director's decision clearly demonstrates that the position in question is a specialty occupation. As will be explained below, the AAO does not agree with counsel.

In reaching its decision, the AAO reviewed the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief, submitted in the form of a letter dated March 31, 2003. Upon consideration of the entire record, the AAO has concluded that the director's denial of the petition was correct, as the evidence of record is insufficient to establish the proffered position as a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the appeal will be dismissed and the petition will be denied.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or

- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The letter of support that the petitioner's president filed with the Form I-129 stated that the proffered position was that of a "cost/budget Accountant [who] will work closely with outside accountants we hire to determine and forecast our revenues in line with our financial goals." According to the letter, this "Accountant specializing in costs and budgeting" will:

1. Apply principles of accounting to analyze past and present financial operations and estimate future revenues.
2. Analyze records of past and present operations, trends and costs, realized revenues, administrative commitments, and obligations incurred to project future revenues and expenses.
3. Document revenues and expenditures expected and advise management thereof.
4. Maintain budgeting systems which provide control of expenditures made to carry out activities, such as advertising and marketing, production, maintenance, or to project activities.
5. Plan study and collect data to determine the costs of business activities.
6. Analyze the effects of changes in e.g. [sic] inventory purchases, personnel hired, etc. on the overall financial condition of the company.
7. Prepare monthly and quarterly schedules for income tax purposes; prepare specific schedules during the audit period.
8. Document accounting systems; analyze budgetary requirements/cost control measures, implementing them.
9. Prepare our monthly financial statements as well as annual balance sheets, profit and loss statements, based on internal ledger information, detailing assets, liabilities, and capital.
10. Review and audit other financial documents such as contracts, orders, vouchers, preparing reports to substantiate individual transactions prior to settlement.

The evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). This provision assigns specialty occupation status to those positions for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO accords no weight to counsel's assertion that the denial of the instant petition is "inconsistent and arbitrary" because CIS has approved "numerous accounting positions for various clients" whose petitions contained the same information about duties as presented here. Favorable actions on petitions filed for other beneficiaries do not have precedential weight. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding before it. See 8 C.F.R. § 103.2(b)(16)(ii). It is beyond the scope of this proceeding for the AAO to speculate about the evidence that was submitted into the individual records of the approved petitions' proceedings, about the specific grounds upon which CIS approved those petitions, or about the correctness of the approvals. Accordingly, the submissions about prior petition approvals have no impact on this proceeding.

CIS has long recognized as a specialty occupation any position which requires the theoretical and practical application of the specialized knowledge that an accountant has acquired by completion of his or her baccalaureate or higher degree coursework, or equivalent education, training, and/or experience, in accounting or a related subject.

However, it is not self-evident, and the evidence of record does not establish, that exercise of the duties here proposed would require that level of accounting knowledge. As reflected in the above listing of the proposed duties, much of the information presented about the position and its duties is generic and generalized. For example, the record does not develop the nature of the "budgeting systems" that the beneficiary would maintain, the mechanisms that the beneficiary would use to "analyze the effects of changes" in the business, or what would be entailed in the beneficiary's efforts to "[d]ocument accounting systems." Another example is the failure of the record to establish why the preparation of tax schedules, profit and loss statements, and annual balance sheets would be so specialized and technical as to be beyond the capabilities of a person with knowledge of relevant accounting principles below that gained by a bachelor's degree in accounting.

In short, the record lacks details sufficient to substantiate the assertions of the petitioner and counsel that the proffered position requires at least a bachelor's degree in accounting. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Because the record does not establish that the position is a genuine accountant position for which the normal minimum entry requirement indeed would be a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Next, the petitioner has not satisfied either of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong requires a position for which there is a specialty degree requirement that is common to the industry in positions which are both (1) parallel to the proffered position, and (2) located in organizations that are similar to the petitioner.

The accountant job-vacancy advertisements that the petitioner submitted from other firms have no significant evidentiary weight. The advertisements are too few to establish an industry-wide educational requirement. Also, the petitioner has not established that the advertised positions are parallel to the one proffered here or that the firms that issued the advertisements are similar to the petitioner. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry to substantiate that the particular position proffered here is one for which there is a common industry-wide requirement for at least a bachelor's degree in a specific specialty.

The AAO also found that the evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." By virtue of the generic and abstract information about the proffered position, the petitioner has not illuminated any complex or unique aspects of the so-called accountant position.

Next, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been satisfied, because the petitioner has not shown that it normally requires at least a bachelor's degree in accounting or a related specialty. On this issue, the petitioner relies on the fact that a previous holder of the position had been granted H-1B status on the basis of his "12 years of progressive experience" which was determined to be equivalent to a bachelor's or higher degree. One prior hiring action is not sufficient evidence that this petitioner has established a certain educational level as a normal hiring requirement.

Finally, the evidence about the proposed duties is too generally stated to satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.